STATE OF MICHIGAN

COURT OF APPEALS

HELEN M. SUMINSKI and MARK G. SUMINSKI, d/b/a ELECTRONIC GUARDING PRODUCTS,

Plaintiffs-Appellants,

v

SICK, INC., f/k/a SICK OPTIC-ELECTRONICS, INC., and MOTION CONTROL CORPORATION,

Defendants-Appellees.

UNPUBLISHED
August 7, 2003

No. 236643
Saginaw Circuit Court
LC No. 00-033272-CK

Before: Fitzgerald, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's orders granting summary disposition in favor of defendants. We affirm.

This case concerns plaintiffs' claims that defendant SICK, Inc., breached a distributor agreement by terminating, without just cause, its relationship with plaintiffs and their business, Electronic Guarding Products (EGP) and that defendant Motion Control Corporation (MCC) tortiously interfered with plaintiffs' business relationship with SICK by inducing SICK to terminate the distributor agreement with plaintiffs in order to enter into an exclusive distributor agreement with MCC.

On appeal, plaintiffs argue that the trial court erred in granting summary disposition in favor of defendants. We review de novo summary disposition decisions. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). In evaluating a motion under MCR 2.16(C)(8), a court considers only the pleadings and "[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Id.* at 119. Summary disposition is appropriate under this subsection "only where the claims alleged are 'so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.'" *Id.*, quoting *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992).

In evaluating a motion for summary disposition brought under MCR 2.116(C)(10), "a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion" to

determine whether a genuine issue regarding any material fact exists. *Maiden, supra* at 120. If the nonmoving party fails to present evidentiary proofs showing a genuine issue of material fact for trial, summary disposition is properly granted. *Smith v Globe Life Ins Co*, 460 Mich 446, 455-456, n 2; 597 NW2d 28 (1999).

First, plaintiffs contend that they had a "just-cause" contractual relationship with SICK, as evidenced by the 1997 "Distributor Policy" that SICK provided to them, and thus the trial court erred in ruling that the language of this policy indicated that the parties operated pursuant to an "at-will" agreement and in dismissing their breach of contract claim against SICK pursuant to MCR 2.116(C)(10). We disagree.

In the context of an employment contract, our Supreme Court has stated the general rule that a "contract of employment, being for no definite period, was a hiring at will and could have been terminated, at any time, by either party without notice." *O'Connor v Hayes Body Corp*, 258 Mich 280, 282; 242 NW2d 233 (1932). In *Lichnovsky v Ziebart Int'l Corp*, 414 Mich 228, 236; 324 NW2d 732 (1982), our Supreme Court observed that the *O'Connor* statement applied in situations similar to the employment contract context, including agency or licensing agreements. The *Lichnovsky* Court ultimately concluded that, despite its indefinite term, the licensing agreement in that case provided for "just-cause" termination because the agreement contained a specific provision permitting termination "should the licensee fail to perform," required a notice of default, provided the licensee thirty days in which to cure the default, and authorized termination by the licensor if the default was not cured. *Id.* at 236-237.

Here, there was no written contract between plaintiffs and SICK during their business relationship, which extended for approximately a decade, but plaintiffs maintain that the 1997 Distributor Policy that SICK sent to them constituted a contract and that the paragraph entitled "Distribution Policy" created a just-cause contractual relationship. That paragraph states:

> Agreements to this policy are in effect throughout the calendar year and must be reviewed and renewed annually. At the end of each year, the renewed agreement not only concludes better communications between SICK Optic-Electronic, Inc. and the distributor but also provides better protection against distributor termination as clearer understanding of performance is anticipated over the coming year.

Plaintiffs claim that the language that "[a]greements to this policy are in effect throughout the calendar year" meant that SICK was required, at the least, not to terminate plaintiffs' distributorship until the end of the calendar year. The trial court rejected this argument and ruled that "the language of the 'Distributor Policy' did not indicate that the parties intended anything other than an at-will relationship." We agree. There is nothing in the language of that paragraph to indicate that simply because the parties have generally agreed to continue their business relationship on a calendar year basis they are precluded from deciding to terminate the relationship later in the year. Moreover, this provision does not specifically state that termination of the distributorship arrangement between the parties will only be for cause. Rather, the terms of this paragraph indicate the policy objective that by making the distributor aware of what was expected by SICK, a clearer understanding could be maintained between SICK and its distributors, and there would be less likelihood that either party would become

dissatisfied and terminate the agreement. Indeed, the only paragraph in the distributor policy that specifically mentions termination is the paragraph immediately above the "Distribution Policy" paragraph. That paragraph, labeled "Cancellation or Termination," provides in relevant part:

> If SICK Optic-Electronic, Inc. or the distributor takes a different direction not agreeable to the other, SICK Optic-Electronic, Inc. will accept, at SICK's discretion, the remaining inventory that is in new and resalable condition. . . .

This appears to be the language of an "at-will" rather than a "just-cause" relationship because either party may opt out of the relationship by simply deciding to "take a different direction." Furthermore, the individual plaintiffs each testified that the relationship was of indefinite duration.[1] Generally, an agreement for an indefinite term that does not contain a specific termination procedure is terminable at will. *Lichnovsky*, *supra* at 236. Accordingly, the trial court did not err in granting summary disposition to SICK because the distributorship agreement provided for "at-will" termination.

Plaintiffs next contend that the trial court erred in dismissing pursuant to MCR 2.116(C)(8) their breach of implied covenant of good faith and fair dealing claim against SICK. According to plaintiffs, contractual relationships contain an implied duty of good faith and fair dealing and SICK violated this implied duty when it terminated EGP's distributorship agreement without just cause and reasonable notice of the termination. However, this Court has declined to recognize a cause of action for breach of an implied covenant of good faith and fair dealing "because such a radical departure from the common law and Michigan precedent should come only from the Supreme Court." *Dahlman v Oakland University*, 172 Mich App 502, 507; 432 NW2d 304 (1988); see also *Ulrich v Federal Land Bank of St Paul*, 192 Mich App 194, 197; 480 NW2d 910 (1991) ("Michigan does not recognize an independent tort action for an alleged breach of a contract's implied covenant of good faith and fair dealing.").

Finally, plaintiffs claim that the trial court erred in dismissing pursuant to MCR 2.116(C)(10) their tortious interference with contractual and/or business expectancy claim against MCC. Plaintiffs base this claim on their assertion that MCC insisted on an exclusive distributorship arrangement with SICK and that this insistence caused SICK to terminate its distributorship agreements with all its other distributors, including plaintiffs.

In *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan (On Remand)*, 217 Mich App 687, 699; 552 NW2d 919 (1996), this Court explained:

> The elements of tortious interference with a business relationship are the existence of a valid business relationship or expectancy, knowledge of the relationship or expectancy on the part of the defendant, an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and resultant damage to the plaintiff.

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[1] Plaintiffs and an EGP representative considered EGP's relationship with SICK as "ongoing" and knew of no standard of performance that needed to be met for EPG to continue on as a distributor of SICK's products.

"[O]ne who alleges tortuous interference with a contractual or business relationship must allege the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another." *Feldman v Green*, 138 Mich App 360, 378; 360 NW2d 881 (1984). "A wrongful act per se is an act that is inherently wrongful or an act that can never be justified under any circumstances." *Prysak v R L Polk Co*, 193 Mich App 1, 12-13; 483 NW2d 629 (1992). "To establish that a lawful act was done with malice and without justification, the plaintiff must demonstrate, with specificity, affirmative acts by the defendant that corroborate the improper motive of the interference." *BPS, supra* at 699, citing *Feldman, supra* 369-370; see also *CMI Int'l, Inc v Intermet Int'l Corp*, 251 Mich App 125, 131; 649 NW2d 808 (2002) ("If the defendant's conduct was not wrongful per se, the plaintiff must demonstrate specific, affirmative acts that corroborate the unlawful purpose of the interference."). "Where the defendant's actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference." *BPS, supra*.

Here, the allegations in plaintiffs' complaint do not establish that MCC did any act that was wrongful per se or that MCC did a lawful act with malice for the purpose of invading EGP's contractual rights or business relationship with SICK. Even when construed in favor of plaintiffs, these allegations do not constitute "specific, corroborative acts." *CMI Int'l, Inc, supra* at 132. "[T]he mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action." *ETT Ambulance Service Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395; 516 NW2d 498 (1994). Moreover, testimony that MCC sought to be SICK's exclusive distributor, without more, fails to demonstrate a genuine issue of material fact. See *BPS, supra*. "[P]arties opposing a motion for summary disposition must present more than conjecture and speculation to meet their burden of providing evidentiary proof establishing a genuine issue of material fact." *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993). To avoid summary disposition, it was necessary for plaintiffs to "sufficiently demonstrate specific, corroborative acts." *CMI Int'l, Inc, supra*. Plaintiffs' allegations fail to satisfy this standard.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell